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AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Kevin S. Sakuda :
Application No. 10/734,891 : ON PETITION
Filed: December 15, 2004 :
Title of Invention: :
SPEARGUN OPEN MUZZLE :
BAND ELEVATORS :

This is a decision in response to the petition for revival of an application for patent abandoned unavoidably under 37 CFR 1.137(a), filed October 31, 2005. The delay in treating this petition is regretted.

The petition under 37 CFR 1.137(a) is dismissed.

Any further petition to revive the above-identified application (under 37 CFR 1.137(a)), must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under 37 CFR 1.137". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background:

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed February 24, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136.

Applicant filed a reply on June 16, 2005; however, Applicant did not include an extension of time request or fee. As such, the reply was not timely.

No timely and proper reply having been received, the application became abandoned on May 25, 2005.

The instant petition

Applicant files the instant petition and asserts that the delay was unavoidable because additional time was required to adequately address and respond to the Office Action.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Applicant has provided a petition fee of \$55.00. Applicant is advised that the fee for filing a petition to revive an application based upon an unavoidable delay was increased on December 8, 2004 to \$250.00. As such, an additional \$195.00 is required before the merits of the petition may be considered.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



Derek L. Woods
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Office of Petitions